

## 2018 Kansas Statutes

**38-2371. Departure sentences; hearing; order; findings of fact; limitations.** (a) (1) Whenever a person is adjudicated as a juvenile offender and sentenced to a juvenile correctional facility as a violent offender pursuant to K.S.A. 2018 Supp. 38-2369(a)(1), and amendments thereto, the court upon motion of the state, shall hold a hearing to consider imposition of a departure sentence pursuant to K.S.A. 2018 Supp. 38-2369, and amendments thereto, and subject to K.S.A. 2018 Supp. 38-2391, and amendments thereto. The motion shall state that a departure is sought and the reasons and factors relied upon. The hearing shall be scheduled so that the parties have adequate time to prepare and present arguments regarding the issues of departure sentencing. The victim of a crime or the victim's family shall be notified of the right to be present at the hearing for the adjudicated person by the county or district attorney. The parties may submit written arguments to the court prior to the date of the hearing and may make oral arguments before the court at the hearing. The court shall review the victim impact statement, if available. Prior to the hearing, the court shall transmit to the juvenile offender or the juvenile offender's attorney and the prosecuting attorney copies of the predispositional investigation report.

(2) At the conclusion of the hearing or within 21 days thereafter, the court shall issue findings of fact and conclusions of law regarding the issues submitted by the parties, and shall enter an appropriate order.

(3) If a factual aspect of a crime is a statutory element of the crime, or is used to determine crime severity, that aspect of the current crime of adjudication may be used as an aggravating factor only if the criminal conduct constituting that aspect of the current crime of adjudication is significantly different from the usual criminal conduct captured by the aspect of the crime. Subject to this provision, the nonexclusive lists of aggravating factors provided in K.S.A. 2018 Supp. 21-6815 and 21-6816, and amendments thereto, may be considered in determining whether substantial and compelling reasons exist.

(b) If the court decides to depart on its own volition pursuant to K.S.A. 2018 Supp. 38-2369(a)(1) and 38-2391, and amendments thereto, without a motion from the state, the court must notify all parties of its intent and allow reasonable time for either party to respond if they request. The notice shall state that a departure is intended by the court and the reasons and factors relied upon.

(c) In each case in which the court imposes a sentence pursuant to K.S.A. 2018 Supp. 38-2369 and 38-2391, and amendments thereto, that deviates from the presumptive sentence, the court shall make findings of fact as to the reasons for departure regardless of whether a hearing is requested.

(d) The judge shall state on the record at the time of sentencing and enter into the written record the substantial and compelling reasons for the departure.

(e) A departure sentence may be appealed as provided in K.S.A. 2018 Supp. 38-2380, and amendments thereto.

**History:** L. 2006, ch. 169, § 71; L. 2010, ch. 135, § 54; L. 2011, ch. 30, § 171; L. 2016 ch. 46, § 47; July 1, 2017.